IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8818 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESH A. DHANDHALA

Versus

STATE OF GUJRAT

Appearance:

MR MP PRAJAPATI for Petitioner No. 1

MS ARCHNA RAVAL, AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/09/2004

ORAL JUDGEMENT

RULE. Ms.Archna Raval, learned AGP, appears and waives service of rule on behalf of the respondents. With the consent of the respective parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an

appropriate writ, order or direction directing the respondents to declare the result of second year P.T.C. examination held in May 2003 of the petitioner. The petitioner has also prayed for an appropriate writ, order or direction directing the Principal of respondent No.2 College to take three remaining practical examination of the petitioner and declare the result of the same within stipulated period.

3. Mr.M.P.Prajapati, learned advocate appearing on behalf of the petitioner, has submitted that though the petitioner has appeared in all the subjects of second year P.T.C. examination and though the petitioner was permitted to appear, the result of the petitioner is not declared and even though the petitioner has repeatedly requested the respondent No.2 to have his practical examination in three subjects, the practical examination of remaining three subjects are not taken and, therefore, the result of the petitioner is not declared for no fault of him. He has further submitted that in fact he was sick on 27-03-2003 and 28-03-2003, the days on which the practical examination of remaining three subjects were held, and, therefore, could not appear in the practical examination. Under the circumstances Mr.Prjapati has submitted that respondent No.2 ought to have taken the practical examination of the petitioner of remaining three subjects.

4. In response to the notice issued by this Court Mr.Archna Raval, learned AGP, appears on behalf of the respondents and an affidavit-in-reply has been filed. It is submitted that the reason given by the petitioner for not remaining present on 27-03-2003 and 28-03-2003 due to sickness is not correct and is got up one. In fact the petitioner has appeared in examination on the aforesaid two dates in 12 Std. examination on behalf of a dummy student Viz. Gohil Dharmarajsinh and, therefore, the result of the petitioner is not declared and also as the petitioner has not passed in practical examination of three subjects. It is also further submitted that in fact the petitioner was called upon by the respondent No.2 to give his explanation and the petitioner has also submitted the explanation in writing on 18-05-2004 confessing that he had appeared in the 12 Std. examination on behalf of one other student on 27-03-2003 and 28-03-2003 and, therefore, requested to dismiss the present petition.

5. At this stage, Mr.Prajapati has submitted that though the result of the petitioner of second year P.T.C. examination of May 2003 be not declared, however, there

is no justification for not taking practical examination of remaining three subjects in the next academic year as there is no order with regard to punishment and/or penalty imposed by the respondents and, therefore, requested that an appropriate order be passed directing respondents more particularly respondent No.2 to take practical examination of the petitioner for the remaining three subjects and thereafter to allow the petitioner to appear in final second year P.T.C. examination.

6. Considering the fact that the petitioner had not passed in practical examination in three subjects which were held on 27-03-2003 and 28-03-2003 the prayer of the petitioner for declaring the result of second year P.T.C. examination held in May 2003 of the petitioner can not be granted. However, in view of the fact that there is no punishment and/or penalty imposed by the respondents for the subsequent year there is no justification on the part of the respondent No.2 in not taking the practical examination of the petitioner with regard to three remaining subjects in the next academic year.

7. Under the circumstances, the respondent No.2 is directed to take practical examination of the petitioner with regard to three remaining subjects and allow the petitioner to appear in the final second year P.T.C. examination thereafter in the next academic year.

Rule is made absolute to the aforesaid extent.
No order as to costs.

Sd/-
[M.R.SHAH, J]

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'Bhavesh'